

# APPLICATION FOR NOMINATION TO JUDICIAL OFFICE

## INTRODUCTION

In light of my previous applications, this introduction highlights notable and relevant experiences since I last applied for an appellate vacancy.

### ***Particular Cases of Significance***

*State v. Pedroza-Perez*: In June 2016 I argued this criminal matter before the Arizona Supreme Court. My argument is now available online:

([http://supremestateaz.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=1977](http://supremestateaz.granicus.com/MediaPlayer.php?view_id=2&clip_id=1977))

*AZ Democratic Party, et al v. Reagan*: On an extremely tight time frame we prepared a responsive brief (on which I took the lead) and prepared for a merits trial in federal court. More information on this case is provided below.

*State v. Vega-Mosqueda*: I represented the State in this appeal before Division Two of the Court of Appeals, which remains pending.

*Brewer v. Arizona Dream Act Coalition*: I provided significant assistance to the Solicitor General in the preparation of our petition for certiorari and reply to the U.S. Supreme Court. Following its first review of the case, on June 26, 2017, the Court called for the views of the U.S. Solicitor General.

Arizona Supreme Court Amicus Briefing: Upon invitation, the Arizona Attorney General's office submitted three "friend of the court" briefs in the past year. I served as the primary author or co-author to the Solicitor General on all three briefs.

### ***Legal Training or Educational Programs***

In the last year I have provided the following training or educational programs:

1. Access to Justice Opportunities – panel participant, AGO program;
2. Public Interest Law – panel participant, UA program;
3. What Conservatism Has to Offer Women – panel participant, ASU program;
4. Lunch and Learn – speaker, Goldwater Institute summer series;
5. Ethics Issues in Agency Representation – speaker, AGO program.

### ***Community Service***

In early 2017, I accepted an invitation to serve as a member of the *Judicial and Attorney Engagement Workgroup*, which is part of the Arizona Commission on Access to Justice.

## SECTION I: PUBLIC INFORMATION (QUESTIONS 1 THROUGH 71)

### PERSONAL INFORMATION

1. Full Name: **Jennifer Michelle Perkins**
2. Have you ever used or been known by any other name? **Yes**. If so, state name:  
**Jennifer Michelle Barnett**
3. Office Address: **1275 W. Washington Street; Phoenix, AZ 85007**
4. How long have you lived in Arizona? **13 years**  
What is your home zip code? **85008**
5. Identify the county you reside in and the years of your residency.  
**Maricopa, 13 years**
6. If nominated, will you be 30 years old before taking office?    ☒ yes    ☐ no  
If nominated, will you be younger than age 65 at the time the nomination is sent to the Governor?    ☒ yes    ☐ no
7. List your present and any former political party registrations and approximate dates of each: **Republican since 1995.**  
(The Arizona Constitution, Article VI, § 37, requires that not all nominees sent to the Governor be of the same political affiliation.)
8. Gender: **Female**  
Race/Ethnicity: **White**

### EDUCATIONAL BACKGROUND

9. List names and locations of all post-secondary schools attended and any degrees received.  
**The George Washington University, Washington D.C.**  
1995-1999 Bachelor of Arts in International Affairs  
**SMU Dedman School of Law, Dallas, Texas**  
1999-2002 Juris Doctor

10. List major and minor fields of study and extracurricular activities.

**College at GWU:**

Major in International Affairs, concentration in Politics; Minor in German.

Extracurricular: InterVarsity Christian Fellowship as a participant and in leadership; politics through internships with U.S. Sen. Pete V. Domenici (R-NM), and with Elizabeth Dole's office during her husband's 1996 campaign for President; German Club (serving eventually as President) and the German Honor Society.

**Law school at SMU:**

Extracurricular: Extensive participation in advocacy programs through competition and administration / leadership of the Board of Advocates; the Federalist Society for Law and Public Policy Studies; and the Christian Legal Society.

11. List scholarships, awards, honors, citations and any other factors (e.g., employment) you consider relevant to your performance during college and law school.

**College at GWU:** A National Merit Scholar, I received a Presidential Scholarship for the bulk of my tuition. I worked at a trademark research firm, assisting in the organization and administration of the Washington D.C. office of the California-based firm. I also earned a paid staff position on Capitol Hill during my final year.

Additional activities: German Honor Society member; participant and leader in InterVarsity Christian Fellowship; NM Delegate, 1996 Republican National Convention.

**Law school at SMU:** I was a finalist for the Hatton W. Sumners Foundation scholarship, and received the J. Cleo Thompson Endowment Scholarship. I also earned the following advocacy-related awards:

ABA National Appellate Advocacy Competition (Spring 2002):

Regional Champions, Second Best Brief, Tenth Best Individual Advocate;

ATLA Mock Trial Competition (Spring 2001):

National Semi-Finalists & Regional Champions;

HNBA Moot Court Competition (Spring 2001):

Best Brief and Quarterfinalist;

Texas Fall Invitational Mock Trial Competition (Fall 2000): Third Place;

SMU Board of Advocates Excellence in Advocacy Award (2001, 2002);

SMU Board of Advocates Outstanding Officer Award (2002)

National Order of the Barristers: a national honor awarded to individuals "who have excelled in advocacy and service" during law school. Only schools nationally recognized for their outstanding moot court competition participation have authorized chapters of the Order with the authority to award this honor. The top ten students in a graduating class receive this award.

<b>PROFESSIONAL BACKGROUND AND EXPERIENCE</b>
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12. List all courts in which you have been admitted to the practice of law with dates of admission. Give the same information for any administrative bodies that require special admission to practice.

New Mexico Supreme Court (2002)

Federal District Court, District of New Mexico (2002)

Arizona Supreme Court (2004)

Federal District Court, District of Arizona (2004)

Ninth Circuit Court of Appeals (2005)

Fifth Circuit Court of Appeals (2008)

13. a. Have you ever been denied admission to the bar of any state due to failure to pass the character and fitness screening? **No**. If so, explain.
- b. Have you ever had to retake a bar examination in order to be admitted to the bar of any state? **No**. If so, explain any circumstances that may have hindered your performance.
14. Describe your employment history since completing your undergraduate degree. List your current position first. If you have not been employed continuously since completing your undergraduate degree, describe what you did during any periods of unemployment or other professional inactivity in excess of three months. Do not attach a resume.

EMPLOYER	DATES	LOCATION
Arizona Attorney General's Office, Solicitor General's Office	Jan. 2015 - present	Phoenix, AZ
Mandel Young PLC	Sep. 2014 - Jan. 2015	Phoenix, AZ
Arizona Commission on Judicial Conduct	Sep. 2009 - Sep. 2014	Phoenix, AZ
Institute for Justice, Arizona Chapter	Sep. 2004 - Sep. 2009	Tempe, AZ
Hon. James O. Browning, DNM	Aug. 2003 - Sep. 2004	Albuquerque, NM
Browning & Peifer, P.A. [Now Peifer, Hanson & Mullins, P.A.]	Aug. 2002 - Aug. 2003	Albuquerque, NM

15. List your law partners and associates, if any, within the last five years. You may attach a firm letterhead or other printed list. Applicants who are judges or commissioners should additionally attach a list of judges or commissioners currently on the bench in the court in which they serve.

**Current (2015-2017)**

Mark Brnovich, Attorney General  
Michael Bailey, Chief Deputy

**Colleagues Within Solicitor General's Office**

Dominic Draye, Solicitor General	*John Lopez, fmr Solicitor General
Dave Cole, Deputy Solicitor General	<i>Now Justice Lopez</i>
Paula Bickett, Civil Appeals Chief	

**Assistant Attorneys General:**

Rusty Crandall  
Kara Karlson  
Joseph LaRue  
Keith Miller  
Kathleen Sweeney  
Toni Valadez

*All Attorneys currently employed by AGO are listed in Attachment 1; it does not include attorneys working in other divisions during my tenure who have left AGO.*

**Mandel Young (2014)**

Robert A. Mandel  
Taylor C. Young  
Peter Silverman  
Erin Ford Faulhaber

**Commission on Judicial Conduct (2009-2014)**

George A. Riemer, Executive Director  
Meredith Vivona, Independent Bar Counsel

*All Commissioners with whom I served are listed in Attachment 2*

16. Describe the nature of your law practice over the last five years, listing the major areas of law in which you practiced and the percentage each constituted of your total practice. If you have been a judge or commissioner for the last five years, describe the nature of your law practice before your appointment to the bench.

**Since January 2015, my practice has been broad ranging and exciting, but not easily classified.** Indeed, if any overall theme could be said to capture my current practice, it is that of quasi-judicial service, specifically appellate service. In three primary areas, I provide advice akin to appellate opinions by evaluating a broad range of matters as Arizona law impacts them.

My role in drafting, editing, and managing AG Opinions (30%) is directly analogous to the position of an appellate judge. This work requires analysis of legal questions on which our state courts have yet to speak. The issues are ones of public importance that require delving into subject matters such as education law, property rights, state government authority, and constitutional rights while applying proper interpretation principles. This area of my practice also involves management skills—to help keep opinion drafting on track—and collaboration between the members of the Opinion Review Committee.

My work as Ethics Counsel to the Office of the Attorney General (30%) is similarly analogous. On a daily basis I confront professional responsibility questions that require me to advise attorneys on the ethical implications of their conduct (or to the conduct of an opposing counsel, judicial officer, or other individual). As with opinions, this process requires me to confront a variety of areas of the law in order to properly evaluate situations: in addition to relevant case law, statutes, and rules, I must familiarize myself with the substantive areas of law such as public records requests; juvenile dependency matters; administrative law; criminal procedure and law; and more. This part of my practice often also requires me to advise additional steps or changes to legal strategy that are not universally popular, but which I believe are legally or ethically mandated. Such work can be daunting, but has reinforced for me the primacy of The Law over situational preferences.

I also assist generally in appellate and primary litigation on behalf of the state (30%). This work includes assisting with briefing (including work on friend of the court amicus briefs); assisting in the evaluation of appropriate legal strategies; and assisting in the preparation for oral arguments. I have been especially honored to assist our newly established Federalism Unit in advocating in support of proper separation of powers between the State of Arizona and our Federal government. I have also had the opportunity to appear before the Arizona Supreme Court in oral argument on behalf of the State in a criminal matter.

Finally, a small portion of my work has been serving as a primary advisor to state agencies (10%), either in the context of providing independent advice during formal proceedings or serving as the attorney to the agencies (specifically to the Governor's Regulatory Review Council; the State Department of Land Board of Appeals; and the Arizona Board of Fingerprinting).

Immediately before I joined the AGO, I served as Of Counsel in an appellate specialty firm. My work there covered matters involving personal injury claims, business and contract litigation, and complex federal cases.

Before that time, I specialized in judicial ethics as Disciplinary Counsel to the Commission on Judicial Conduct. Importantly, in order to properly discharge my duties in that regard, I routinely encountered a broad range of subject matter areas as was necessary in evaluating ethics complaints. In order to evaluate whether a judge had intentionally disregarded the law or engaged in a pattern of legal error, I had to first educate myself as to the status of the law in the given area.

17. List other areas of law in which you have practiced.

**Constitutional Law**

**Administrative Law**

**Appellate work in civil matters such as contracts, defamation, and torts**

**Judicial Ethics\***

\*As noted above, my work at the Arizona Commission on Judicial Conduct touched on virtually every area of Arizona law because hundreds of the complaints required a review of procedural and substantive law to ensure alleged errors did not constitute ethical misconduct pursuant to Rules 1.1 and 2.2 of the Code of Judicial Conduct. Former CJC members like Judge Lawrence Winthrop and Yavapai County Attorney Sheila Polk can speak to this point.

18. Identify all areas of specialization for which you have been granted certification by the State Bar of Arizona or a bar organization in any other state. **None.**

19. Describe your experience as it relates to negotiating and drafting important legal documents, statutes and/or rules.

**Of primary relevance, I have held three positions requiring me to draft or aid the drafting of opinions akin to judicial opinions.** In my clerkship with Judge Browning I assisted in the drafting of actual judicial opinions, specifically more than 50 opinions on motions, many of substantial length.

While at the Commission on Judicial Conduct, I had primary authority for drafting the orders in informal matters not summarily dismissed, which required factual and legal findings and conclusions. With regard to formal matters, I prepared proposed findings and conclusions in all matters in addition to the advocacy briefing, for which I was solely responsible.

Finally, in my current position, I have had the opportunity to draft myself or assist in reviewing and editing the drafts of all Attorney General Opinions issued during this administration.

Outside of opinion writing, I also have assisted in or provided primary authorship in whole or in part for numerous amicus and appellate briefs as well as trial court litigation documents such as complaints, answers, motions to dismiss, motions for summary judgment, and settlement or consent decree documents.

During my time at the CJC, and again at the AGO, I have had responsibility for reviewing and preparing proposed rule changes. I have authored rule change petitions or memoranda in support of such petitions. I have also provided internal evaluation and analysis of proposed and adopted rule changes. In both roles I have had responsibility for creating or updating internal manuals based on the rules.

20. Have you practiced in adversary proceedings before administrative boards or commissions? **Yes.** If so, state:

- a. The agencies and the approximate number of adversary proceedings in which you appeared before each agency.

**Arizona Commission on Judicial Conduct:** 2 formal hearings, 3 reconsideration hearings, and approximately 50 adversarial matters

**Pinal County Board of Supervisors:** 1 administrative appeal

**Arizona Structural Pest Control Commission:** 1 administrative proceeding

- b. The approximate number of these matters in which you appeared as:

Sole Counsel: 55

Chief Counsel: 2

Associate Counsel: 0

21. Have you handled any matters that have been arbitrated or mediated? **Yes.** If so, state the approximate number of these matters in which you were involved as:

Sole Counsel: 3

Chief Counsel: 0

Associate Counsel: 0

22. List at least three but no more than five contested matters you negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (3) a summary of the substance of each case; and (4) a statement of any particular significance of the case.

**Case One: In re Theodore Abrams**

(1) January – May 2011

(2) Mark Harrison and Mark Hummels (deceased)

Osborn Maledon

2929 North Central Ave., Suite 2100

Phoenix, AZ 85012

602-640-9324

[mharrison@omlaw.com](mailto:mharrison@omlaw.com)

*Counsel for Respondent Theodore Abrams*



- (3) Theodore Abrams, a municipal judge in Tucson, received complaints of sexual harassment against attorneys who appeared in his courtroom. The complaints included both consensual, but inappropriate, sexual conduct and non-consensual, harassing conduct.

We ultimately reached an agreement for the judge to accept a censure recommendation by the Arizona Commission on Judicial Conduct (“CJC”). The Supreme Court censured the judge, enjoining him from any further service as an Arizona judge, and suspended his license to practice law for two years.

- (4) This matter was particularly difficult because it involved three separate bodies with overlapping jurisdiction: the Tucson City Council, the CJC, and the State Bar of Arizona. Given the nature of the allegations, time was of the essence, and a high degree of sensitivity required. Judge Abrams opted to resign his position, divesting the City of Tucson of jurisdiction for further action, and leaving me with the decisions whether to pursue something further on behalf of the State through the CJC and how, if at all, to address potential sanctions against the judge’s license to practice as an attorney.

### **Case Two: In re Patty Nolan**

- (1) June 2010

- (2) Mel McDonald

Attorney for Respondent Patricia Nolan  
Jones Skelton & Hochuli P.L.C.  
40 North Central Ave., Suite 2700  
Phoenix, Arizona 85004  
602-263-1700  
[mmcdonald@jshfirm.com](mailto:mmcdonald@jshfirm.com)

- (3) Between 2004-2009, various entities including the Administrative Office of the Courts (“AOC”) and the Gila County Attorney, identified significant processing delays within the Globe Regional Justice Court. This ultimately led to two separate matters before the Arizona Commission on Judicial Conduct (“CJC”) in 2009. After filing formal charges and engaging in brief discovery, mediation occurred between Judge Nolan’s counsel and myself, with then-CJC member and Yavapai County Attorney Sheila Polk serving as mediator. This process eventually resulted in a stipulation by which the judge resigned from her position, accepted a written censure, and agreed not to run for or accept an appointment to the position of a judge or judicial officer in the future.
- (4) Both CJC matters relating to Judge Nolan were pending at the time I began work as Disciplinary Counsel. The allegations included delays in issuing warrants or default judgments in numerous cases, some involving multi-year delays. The allegations required investigation involving interviews of court staff, many of whom were reluctant to speak with an outsider. This case also required a great deal of sensitivity regarding the best way to vindicate the duties and obligations of the office without improperly seeking punitive outcomes.

### Case Three: Rissmiller and Park v. AZ Structural Pest Control Commission

(1) September 2006

(2) M. Elizabeth Miles\*

Arizona Attorney General's Office  
1275 W. Washington Street  
Phoenix, Arizona 85007  
602-321-7217  
[Lisa.Miles@cox.net](mailto:Lisa.Miles@cox.net)

*\*Ms. Miles no longer works for the Attorney General, but provided her personal contact information in the form of email and phone number.*

(3) Gary Rissmiller and Larry Park provided landscape maintenance services in Tucson and Marana, respectively. Both were prevented from using over-the-counter weed control products (such as Round-Up) due to prohibitive and layered licensing requirements through the Arizona Structural Pest Control Commission. Partnering with the Institute for Justice Arizona Chapter, they challenged the requirements as punitively onerous and un-related to public health and safety. The lawsuit resulted in a legislative effort to fix a problem that all sides recognized. Working primarily with stakeholders and lawmakers, I assisted in drafting amendments to the law permitting my clients to provide their services within the bounds of public health and safety concerns.

(4) This case has an interesting post-script: this was the Institute for Justice's second effort against the state's overreaching Structural Pest Control Commission. As a direct result of the two cases, and in particular my efforts on behalf of Mr. Rissmiller and Mr. Park, the "Sunset Review" process that occurred shortly thereafter led to the dismantling of that commission (its core responsibilities related to public health and safety concerns are now maintained through the State Department of Agriculture).

23. Have you represented clients in litigation in Federal or state trial courts?  
**Yes** If so, state:

The approximate number of cases in which you appeared before:

Federal Courts: 12

State Courts of Record: 30

Municipal/Justice Courts: 0

The approximate percentage of those cases which have been:

Civil: 98%

Criminal: 2%

The approximate number of those cases in which you were:

Sole Counsel:	15
Chief Counsel:	7
Associate Counsel:	20

The approximate percentage of those cases in which:

You wrote and filed a pre-trial, trial, or post-trial motion that wholly or partially disposed of the case (for example, a motion to dismiss, a motion for summary judgment, a motion for judgment as a matter of law, or a motion for new trial) or wrote a response to such a motion:	50%
You argued a motion described above	5%
You made a contested court appearance (other than as set forth in the above response)	15%
You negotiated a settlement:	50%
The court rendered judgment after trial:	15%
A jury rendered a verdict:	0%

The number of cases you have taken to trial:

Limited jurisdiction court	0
Superior court	0
Federal district court	2
Jury	0

\* I tried two formal hearings before the Commission on Judicial Conduct that approximated a bench trial experience.

24. Have you practiced in the Federal or state appellate courts? **Yes.** If so, state:  
The approximate number of your appeals which have been:

Civil:	22
Criminal:	2
Other [Amicus]:	6

The approximate number of matters in which you appeared:

As counsel of record on the brief:	15
Personally in oral argument:	2

25. Have you served as a judicial law clerk or staff attorney to a court? **Yes.** If so, identify the court, judge, and the dates of service and describe your role.

**Judicial Law Clerk to the Honorable James O. Browning, federal district court judge in the District of New Mexico, August 2003 – September 2004.**

Judge Browning was appointed to the bench during my tenure as an associate lawyer with Browning and Peifer, his law firm, and he hired me as his first law clerk. In addition to traditional clerk duties related to cases, I also assisted the judge in setting chambers policies and practices, and in acclimating to judicial ethics rules regarding his transition from private practice.

Judge Browning issued more than 100 substantive opinions during my year with him, and averaged at least one trial per month (primarily, though not exclusively, jury trials). He offered attorneys a hearing on every filed motion, and we typically assisted him to be prepared to issue initial rulings from the bench followed quickly by written opinions. Further, as a chambers we sought to avoid carrying over any fully submitted matters beyond 60 days. In practice, we generally met that goal.

26. List at least three but no more than five cases you litigated or participated in as an attorney before mediators, arbitrators, administrative agencies, trial courts or appellate courts that were not negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency and the name of the judge or officer before whom the case was heard; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

**Case One: Dale Bell v. Pinal County Board of Supervisors**

(1) 2006-2008

(2) Hon. William J. O'Neil, Pinal County Superior Court\*

*\*Judge O'Neil now serves as Arizona's Presiding Disciplinary Judge*

(3) Tim Keller

Institute for Justice,  
Arizona Chapter  
398 S. Mill Ave.  
Tempe, Arizona 85281  
480-557-8300

[Tkeller@ij.org](mailto:Tkeller@ij.org)

*Co-counsel for Dale Bell*

Seymour Gruber, Deputy County Attorney  
Pinal County Attorney's Office  
31 N. Pinal, Bldg. D  
Florence, Arizona 85132  
520-866-6271

[Seymour.Gruber@pinalcountyz.gov](mailto:Seymour.Gruber@pinalcountyz.gov)

*Counsel for Pinal County Board of Supervisors*

*[NOTE: Mr. Gruber appears to have left the county and is now employed as a prosecutor with the Gila River Indian Community; I was unable to connect with him in advance of submitting this application and so, unfortunately, I do not have his current contact information]*

- (4) My client, Dale Bell, is an entrepreneur who opened a popular western-themed restaurant on county land named San Tan Flat. County leadership targeted Dale's business over the course of several years with a variety of regulatory hurdles. The disputes came to a head when the county dusted off a 1940s era ordinance requiring that dancehalls be fully enclosed. Because Dale's restaurant

offered live music and dancing under the stars, the county took the position that the restaurant transformed into an illegal dancehall in the evenings—and imposed a \$700 per day fine. I led the ensuing litigation, wherein Dale sued the Board of Supervisors for \$1 arguing that their actions impermissibly infringed on his constitutional rights and amounted to a tortured and absurd reading of an inapplicable county ordinance. At the conclusion of oral argument, Judge O'Neil ruled against the county.

- (5) This case highlighted for me the power and responsibility that come with government authority. I was honored to provide pro-bono representation to Dale, a man who just wanted to run a successful restaurant without unreasonable interference from the authorities. But I was also taken aback at how aggressive the county officials were in their efforts to twist the words and meaning of the law in pursuing my client. It's rare that a visual aid is appropriate at an oral argument, but in that case I had the wording of the ordinance at issue reproduced on a large demonstrative aid. I believe I won primarily by pointing the judge back to the text and purpose of the county's own ordinance—an experience that reinforced my own passion for getting the law right and the primacy of a textualist approach.

### **Case Two: In re Woolbright**

(1) 2011-2012

(2) Commission on Judicial Conduct; Arizona Supreme Court

(3) Larry Cohen

PO Box 10056

Phoenix, Arizona 85064

602-266-3080

[ljc@ljcohen.com](mailto:ljc@ljcohen.com)

*Counsel for Judge Woolbright*

- (4) Shortly after he took the bench, then Justice of the Peace Phillip Woolbright intentionally evaded service of process by directing a member of his staff to move his vehicle away from the waiting process server and into the secured judicial parking area. He continued to evade service for numerous days before finally accepting service of the order of protection issued against him at his then-wife's request. Mr. Woolbright thereby embarked upon a series of poor decisions, many of which individually constituted ethical misconduct and altogether which demonstrated he was unfit to serve as a judge.

There is no question that Mr. Woolbright was under substantial emotional and mental stress during this time due to an acrimonious divorce process.

Nonetheless, his continued obfuscations and changing stories combined with his general refusal to acknowledge culpability for his misconduct led to the filing of formal charges, a two-day formal hearing before a panel of the Commission on Judicial Conduct, and ultimately his removal from the bench by the Arizona Supreme Court.

- (5) This case was significant for me both on a professional and a personal level. Professionally, the case was simply difficult in terms of the unusual volume of motion practice for a judicial disciplinary matter, some of which involved novel legal issues. Substantively, it presented me with the challenge of balancing the duty to protect the public and enforce the ethical rules while taking into consideration the mitigating factors presented by the judge's personal circumstances and relative inexperience.

Personally, this case occurred during a time in which I faced a series of traumatic private events. Our initial attempt at a settlement mediation occurred the day after I experienced a miscarriage of my first pregnancy in November 2011. Not long thereafter, just during the time frame for pursuing formal charges, I learned I was pregnant again. Within weeks, I fell on the steps of the Arizona Courts Building shattering my left ankle. After surgery, I was bed-ridden for a brief time and encumbered for a much longer time. I managed my general case load in addition to the Woolbright matter as the CJC's sole attorney throughout this time. The formal hearing, requests for reconsideration, and submission to the Arizona Supreme Court for review carried me through to my eighth month of pregnancy.

I learned a great deal from this experience. I learned that pursuing one's duty under the law need not equal a lack of empathy or humanity, but may be dictated by a higher fidelity to the law. I also learned that being engaged in important work can mean carrying that load through a time of personal difficulty, and that coming out the other side of both the work and the difficulties makes a person that much stronger.

### **Case Three: Mill Alley Partners v. Wallace**

- (1) 2014
- (2) Hon. Diane Johnsen, Hon. John Gemmill, Hon. Lawrence Winthrop, Arizona Court of Appeals, Division One
- (3) Robert Mandel & Taylor Young, Mandel Young, PLC  
2390 E. Camelback Rd., Suite 318  
Phoenix, Arizona 85016  
602-374-4591  
[rob@mandelyoung.com](mailto:rob@mandelyoung.com)  
[taylor@mandelyoung.com](mailto:taylor@mandelyoung.com)  
*Co-Counsel for Plaintiff / Appellee*
- Mary Hone, Law Offices of Mary T. Hone  
10505 N. 69<sup>th</sup> Street, Suite 1400  
Paradise Valley, Arizona 85253  
480-336-2557  
[mary@honelegal.com](mailto:mary@honelegal.com)  
*Counsel for Defendants / Appellants*

- (4) A landlord sued the guarantor, who was a previous tenant and who had guaranteed the lease of the subsequent tenant for a period of 36 months, for breach of that guaranty. The jury returned a general verdict for the guarantor, and the trial judge granted landlord's request for a new trial. On appeal, the panel agreed with the trial judge that error occurred, but found no evidence of prejudice and so the error was not fundamental warranting a new trial.
- (5) After five years of judicial misconduct cases I moved into private appellate practice and this was my first case. I entered the case after briefing and with a relatively short period of time in which to prepare for oral argument. Although my position did not ultimately prevail, I represented the client well in oral argument and learned a great deal about a new area of the law in the process.

#### **Case Four: State of Arizona v. Pedroza-Perez**

(1) 2016

(2) Arizona Supreme Court

(3) Joseph Maziarz                      Amy Pignatella Cain  
Office of the Arizona Attorney General  
1275 W. Washington St.      400 West Congress, Bldg. S-315  
Phoenix, Arizona 85007      Tucson, Arizona 520-628-6520  
602-542-8584                      520-628-6520  
[Joseph.Maziarz@azag.gov](mailto:Joseph.Maziarz@azag.gov)      [Amy.Cain@azag.gov](mailto:Amy.Cain@azag.gov)  
*Co-Counsel for State of Arizona*

Rebecca A. McLean  
Pima County Public Defender  
33 N. Stone, 21<sup>st</sup> Floor  
Tucson, Arizona 85701  
520-724-6800  
[Rebeccal.McLean@pima.gov](mailto:Rebeccal.McLean@pima.gov)  
*Counsel for Petitioner*

- (4) Pima County and Border Control officials apprehended Defendant Pedroza-Perez near Ajo, Arizona, with about 134 pounds of marijuana in backpacks nearby. He was indicted for three offenses, and the jury found him guilty on two of the three counts. At trial, he intended to offer a duress defense, the only evidence of which was his own testimony. The judge precluded mention of the duress defense in opening statements, but instructed the jury on duress and allowed it to be argued in closing once the Defendant testified to establish evidence to support the defense. Counsel for the Defendant appealed arguing that the limitation on opening statements was reversible error. The Court of Appeals affirmed the trial court, and the Arizona Supreme Court accepted review and heard argument on June 28, 2016.
- (5) I stepped into this case after all briefing before the Supreme Court concluded for the purpose of presenting argument. While I am acquainted with criminal law in



Arizona from my time at the Commission on Judicial Conduct, this case served as my first opportunity to work in this area of law. The criminal nature of the case certainly served to heighten my attention to detail, and to the implications for the rights of criminal defendants. An interesting aspect of the case is that the State conceded—in between the time that the Petition for Review was filed and the filing of the parties’ supplemental briefing—that the limitation on the opening statement constituted an abuse of discretion. So the argument before the Supreme Court centered on whether that abuse was prejudicial.

I learned a great deal about the criminal trial and appeal process, and enjoyed the opportunity to appear before the distinguished members of our Supreme Court.

**Case Five: Arizona Democratic Party and the Democratic National Committee v. Michele Reagan, Arizona Secretary of State**

- (1) 2016
- (2) Hon. Steven P. Logan, District of Arizona; Ninth Circuit Court of Appeals; United States Supreme Court
- (3) Kara M. Karlson  
Joseph La Rue  
Office of the Arizona Attorney General  
1275 W. Washington St.  
Phoenix, Arizona 85007  
602-542-8020  
[Kara.Karlson@azag.gov](mailto:Kara.Karlson@azag.gov)  
[Joseph.LaRue@azag.gov](mailto:Joseph.LaRue@azag.gov)  
*Co-counsel for Defendant Michele Reagan*

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*Counsel for Arizona Democratic Party and the Democratic National Committee*

- (4) The plaintiffs in this case sued the Arizona Secretary of State seeking an injunction to extend the voter registration deadline as a result of the deadline falling on the Columbus Day holiday. The challenge came to our office on October 20, and the Court set the injunction hearing for the afternoon of October 21. Joseph La Rue, who would normally have served as the second member of



the team, was away from the office so I stepped in to assist with the case. I took the lead on preparing our Response brief, which was due on October 21 before the hearing. I also assisted in the preparation of witness and exhibit lists.

The hearing turned out to serve as a merits trial for a permanent injunction—normally something that could involve months of litigation and for which we had 24 hours to prepare. I'm proud of the work product we completed, in particular on my part a solid brief literally drafted overnight. I assisted in witness examination during the trial as well, although Kara Karlson was lead counsel for that proceeding.

The matter continued into the following week with a flurry of additional briefing and motions, plus proposed findings of fact and conclusions of law. We received the court's order denying the injunction just after 5pm on November 3.

- (5) This case required me to step into an area of law with which I am familiar, but in which I do not regularly practice. In doing so I had to serve as the primary author of a significant brief that was largely constructed after 4pm and before 10am. I also worked alongside my co-counsel to prepare for a trial on the merits that had potential, substantial consequences for the state's upcoming elections. We were ultimately successful and, even more importantly, I believe we served the client well under difficult constraints.

27. If you now serve or have previously served as a mediator, arbitrator, part-time or full-time judicial officer, or quasi-judicial officer (e.g., administrative law judge, hearing officer, member of state agency tribunal, member of State Bar professionalism tribunal, member of military tribunal, etc.), give dates and details, including the courts or agencies involved, whether elected or appointed, periods of service and a thorough description of your assignments at each court or agency. Include information about the number and kinds of cases or duties you handled at each court or agency (e.g., jury or court trials, settlement conferences, contested hearings, administrative duties, etc.).

N/A

28. List at least three but no more than five cases you presided over or heard as a judicial or quasi-judicial officer, mediator or arbitrator. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

N/A

29. Describe any additional professional experience you would like to bring to the Commission's attention.

**I have a unique appreciation for the legislative process because I have provided legislative expert testimony in addition to working for a state legislature and the**

**United States Senate.** While serving as a public interest attorney with the Institute for Justice, I had the opportunity to provide testimony before the Legislatures in Arizona and New Mexico. Further, in both states plus the State of Texas I had the opportunity to coordinate stakeholders' meetings for the purpose of promulgating legislation to expand individual liberties and property rights.

While in college, I served on staff for a term of the New Mexico State Legislature evaluating the potential impact of legislation and making recommendations to members regarding the language of bills and proposed amendments. Also during my college years, I served as both an intern and a paid staff member for Senator Pete V. Domenici. My work in the U.S. Senate primarily involved communications with constituents and members of the press regarding pieces of legislation.

All of these experiences taught me about the process by which law is made in this country. I consider that knowledge invaluable for a judge who is not called upon to make law, but rather to properly interpret and apply the law.

#### **BUSINESS AND FINANCIAL INFORMATION**

30. Have you ever been engaged in any occupation, business or profession other than the practice of law or holding judicial or other public office, other than as described at question 14? **No.** If so, give details, including dates. **N/A**
31. Are you now an officer, director, majority stockholder, managing member, or otherwise engaged in the management of any business enterprise? **No.** If so, give details, including the name of the enterprise, the nature of the business, the title or other description of your position, the nature of your duties and the term of your service. **N/A**
- Do you intend to resign such positions and withdraw from any participation in the management of any such enterprises if you are nominated and appointed? **N/A** If not, explain your decision. **N/A**
32. Have you filed your state and federal income tax returns for all years you were legally required to file them? **Yes** If not, explain.
33. Have you paid all state, federal and local taxes when due? **Yes** If not, explain.
34. Are there currently any judgments or tax liens outstanding against you? **No** If so, explain.
35. Have you ever violated a court order addressing your personal conduct, such as orders of protection, or for payment of child or spousal support? **No** If so, explain.

36. Have you ever been a party to a lawsuit, including an administrative agency matter but excluding divorce? **No** If so, identify the nature of the case, your role, the court, and the ultimate disposition.
37. Have you ever filed for bankruptcy protection on your own behalf or for an organization in which you held a majority ownership interest? **No** If so, explain.
38. Do you have any financial interests including investments, which might conflict with the performance of your judicial duties? **No** If so, explain.

<b>CONDUCT AND ETHICS</b>
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39. Have you ever been terminated, asked to resign, expelled, or suspended from employment or any post-secondary school or course of learning due to allegations of dishonesty, plagiarism, cheating, or any other “cause” that might reflect in any way on your integrity? **No** If so, provide details.
40. Have you ever been arrested for, charged with, and/or convicted of any felony, misdemeanor, or Uniform Code of Military Justice violation? **No**  
If so, identify the nature of the offense, the court, the presiding judicial officer, and the ultimate disposition.
41. If you performed military service, please indicate the date and type of discharge. **N/A** If other than honorable discharge, explain. **N/A**
42. List and describe any matter (including mediation, arbitration, negotiated settlement and/or malpractice claim you referred to your insurance carrier) in which you were accused of wrongdoing concerning your law practice. **N/A**
43. List and describe any litigation initiated against you based on allegations of misconduct other than any listed in your answer to question 42. **N/A**
44. List and describe any sanctions imposed upon you by any court. **N/A**
45. Have you received a notice of formal charges, cautionary letter, private admonition, referral to a diversionary program, or any other conditional sanction from the Commission on Judicial Conduct, the State Bar, or any other disciplinary body in any jurisdiction? **No** If so, in each case, state in detail the circumstances and the outcome.
46. During the last 10 years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by federal or state law? **No** If your answer is “Yes,” explain in detail.
47. Within the last five years, have you ever been formally reprimanded, demoted, disciplined, cautioned, placed on probation, suspended, terminated or asked to resign by an employer, regulatory or investigative agency? **No**. If so, state the circumstances under which such action was taken, the date(s)

such action was taken, the name(s) and contact information of any persons who took such action, and the background and resolution of such action.

48. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? **No.** If so, state the date you were requested to submit to such a test, type of test requested, the name and contact information of the entity requesting that you submit to the test, the outcome of your refusal and the reason why you refused to submit to such a test.
49. Have you ever been a party to litigation alleging that you failed to comply with the substantive requirements of any business or contractual arrangement, including but not limited to bankruptcy proceedings? **No.** If so, explain the circumstances of the litigation, including the background and resolution of the case, and provide the dates litigation was commenced and concluded, and the name(s) and contact information of the parties.

#### **PROFESSIONAL AND PUBLIC SERVICE**

50. Have you published or posted any legal or non-legal books or articles? **Yes.** If so, list with the citations and dates.

**“Justice Scalia’s pet issue was based on the roots of liberty”** The Record Reporter, March 21, 2016

**“Appellate Patience is a Virtue”** Attorney at Law Magazine, December 2014  
Jennifer M. Perkins, **Current Developments in Arizona Judicial Ethics**, 4 Phoenix L. Rev. 667 (2011)

**“The Supreme Court and 36 Days: Did Bush v. Gore violate principles of comity or federalism?”** The Candid Review, October 2001

51. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge? **Yes.** If not, explain.
52. Have you taught any courses on law or lectured at bar associations, conferences, law school forums or continuing legal education seminars? **Yes.** If so, describe.

**During my time with the AGO, I have participated in five CLE presentations relating to ethics issues, three internally and two additional presentations for attendees at a small annual ethics program. I have also had the opportunity to speak at two public law school forums and one private lunch program for law students on my experiences in public interest law.**

While at the Commission on Judicial Conduct, I provided approximately 10-12 training sessions on judicial ethics during judicial orientation programs. I also provided annual ethics training for incoming law clerks to the Arizona Supreme Court and Court of Appeals. The Association of Judicial Disciplinary Counsel invited me to present at their annual meeting in July 2104, where I participated on a panel reviewing major ethics cases from the preceding year.

In my time at the Institute for Justice, I spoke on a number of occasions and in a variety of formats about public interest law generally and our work specifically. Based on a conservative estimate, I provided at least 20 such presentations in my five years with IJ.

53. List memberships and activities in professional organizations, including offices held and dates.

**Federalist Society for Law and Public Policy Studies** – student President (2001-2002), Phoenix Lawyers Chapter President (2006-2009, 2014-present)

Have you served on any committees of any bar association (local, state or national) or have you performed any other significant service to the bar? **No.**

List offices held in bar associations or on bar committees. **N/A** Provide information about any activities in connection with pro bono legal services (defined as services to the indigent for no fee), legal related volunteer community activities or the like.

**Most of my career has been dedicated to public service, including pro bono representation.** Outside of work, I have provided pro bono legal advice and assistance to my church and numerous church members in the context of church organization; contract negotiation and legal compliance (including assisting in drafting a church constitution); family; minor civil disputes; and minor criminal matters.

54. Describe the nature and dates of any relevant community or public service you have performed.

**In 2017, I accepted an invitation to join the Arizona Commission on Access to Justice's Judicial and Attorney Engagement Workgroup as a volunteer member.**

Among other goals, our work seeks to provide training programs to attorneys on access to justice and pro bono opportunities, and make recommendations for better engagement of active and retired attorneys and judges in pro bono work.

In addition, I have served as a church deacon for more than five years now, which encompasses a wide range of duties and responsibilities in a volunteer capacity. A significant amount of my service has been to my church and its immediately surrounding community from periodic church or area clean-up projects, to assisting in food collection for various entities (including our own in-house food pantry).

I have generally been responsible for staffing and running the nursery and young children's programs as well as the sound booth. This includes editing and distributing the sermons electronically, and assisting with preparation of a new website.

Organizations I've supported with group projects include Feed My Starving Children and the Crisis Pregnancy Center.

I have also, in the past, served as a volunteer judge for state high school mock trial programs and have informally mentored law students who have interned or clerked for me.

55. List any relevant professional or civic honors, prizes, awards or other forms of recognition you have received.

**AGO Leadership in Action Award 2015:** This award is provided to one attorney and one staff member annually who have each assisted others in assessing and resolving a delicate or sensitive situation; led/facilitated work groups; and provided direction from an organizational perspective.

56. List any elected or appointed public offices you have held and/or for which you have been a candidate, and the dates. **N/A**

Have you ever been removed or resigned from office before your term expired? **No.** If so, explain.

Have you voted in all general elections held during the last 10 years? **Yes.** If not, explain.

57. Describe any interests outside the practice of law that you would like to bring to the Commission's attention.

**My primary interests outside practicing law fall in three areas: faith, family, and the Federalist Society.**

As a Deacon at my church, I have a number of specific responsibilities, but also a general mandate to ensure the physical needs of the church community are met. My activities range from "work days" spent maintaining the church property; to editing and preparing digital versions of sermons and running our sound booth; to assisting church event planning; and to caring for church members generally.

As a full-time working mom with a precocious toddler at home I also have a significant focus on working alongside my husband to teach and raise our youngest daughter. Our middle daughter will start a Masters Degree program in German at the University of Arizona this fall and we are thrilled that she and her husband, a native German, will live in the Phoenix area so that we have time with them. Our oldest is currently living in Oregon and recently blessed us with twin grandsons, Angelo and Andreas. It is our delight to prioritize our opportunities to spend time with family.

Finally, I have been an active and engaged Federalist Society member for more than 15 years now. The Society is committed to the principles that the state exists to preserve freedom, that the separation of governmental powers is central to our Constitution, and that it is emphatically the province and duty of the judiciary to say what the law is, not what it should be. We seek to promote awareness of these principles and to further their application through our activities, which primarily consist of hosting speaker events on topics of significant public interest. We always seek to present these topics through discussion and debate that affords a fair exposure to differing views.

Some examples of programs we have hosted in Phoenix recently include:

Criminal Justice Reform (April 2017)

The New Town Square: Speech and Censorship on the Internet (March 2017)

Duty to Defend the Law: a panel discussion (February 2017)

### HEALTH

58. Are you physically and mentally able to perform the essential duties of a judge with or without a reasonable accommodation in the court for which you are applying? **Yes**

### ADDITIONAL INFORMATION

59. The Arizona Constitution requires the Commission to consider the diversity of the state's population in making its nominations. Provide any information about yourself (your heritage, background, life experiences, etc.) that may be relevant to this consideration.

**I am a wife, mother, "bonus" mother to my husband's two daughters, and grandma to twin baby boys.** I believe my experiences as a wife and mother substantially impact the kind of attorney I am and judge I would be. These roles have made me more empathetic and protective of the vulnerable, and have taught me the paramount importance of good communication skills. But they have also taught me that often the correct decision, the best decision for my child's or my marriage's future, is not the easiest or most popular decision in the moment.

The law is often like that: the popular or easy decision of the moment is not the correct one, is not the one with fidelity to the purpose of the law and our system of justice. Doing justice, taking care with the law itself, may not always be popular. As a mother, in particular, I'm equipped to make the unpopular but right decision.

I'm not an Arizona native, and in the thirteen years I've lived here I have not lived outside of Maricopa County. But my story is much broader geographically, and my varied living experiences have taught me a great deal about appreciating and working with both differences and commonalities across cultures.

I was born in Portales, New Mexico, a small town near the Texas border surrounded primarily by dairy farms and other agricultural interests. We eventually moved to Albuquerque, which is a more urban area generally, but is unique in its ethnic make-up and history. While attending the Albuquerque Academy, I participated in an exchange program with the Acoma Pueblo, staying for a brief time with a family in Acomita and attending classes at the local school. During high school, my family hosted exchange students from Belgium, France, Germany, and Sweden.

After high school graduation, I sold my jeep and took my paper route money to spend two months in Australia camping through the Outback. My trip included a stay with rural families in both southern Australia and in the Northern Territories. I experienced school-by-radio and cow-herding by helicopter. We also visited extremely impoverished Aboriginal settlements.

I attended college on the east coast and lived in Washington D.C. and Arlington, Virginia. I spent my junior year abroad, during which I lived in southern Germany and traveled extensively throughout Europe. I also managed a brief home-stay with a family in Chiba City, Japan, that same year.

My travels have been fewer since "real life" began, but my experiences around the world have taught me to appreciate the many things we share in common with our fellow travelers here on Earth. I believe these wide-ranging experiences have molded me into a woman who can relate to and represent a variety of perspectives found here in Arizona and with which this Constitutional directive is concerned.

60. Provide any additional information relative to your qualifications you would like to bring to the Commission's attention.

**One area of my experience that may not be otherwise expressly clear from my application is my relative expertise in technology and new media.** During my time at the Commission on Judicial Conduct I assisted in transitioning from a primarily paper / hard copy office to one that is substantially digitized. Commission members now primarily receive materials securely and electronically. I further assisted initiate changes to the website to bring greater accessibility and transparency for the public.

I've had similar experience in my personal life through my work with the church, the Federalist Society, and a separate group from another state that, for a time, published an anonymous commentary blog site. For all three I've had some level of involvement in designing and maintaining a web presence. This includes work in Wordpress and Joomla, as well as Facebook, Twitter, Instagram, and related social media services.

I believe this is relevant because more and more we will see these online media and platforms become relevant in legal disputes.



Several years ago, entities in various states (some courts, some commissions) charged with providing advisory opinions on ethics issues to judges began issuing opinions addressing whether and when judges could ethically participate in social media. Can a judge be on Facebook? If so, what limits should the judge observe? These and others are important questions, and I believe properly addressing them requires a sufficient understanding of the underlying technology. How can one properly opine about the appropriate use of "friending" or "following" or "liking" when one has no personal experience with or comprehension of the context and implications of these functions within social media?

There are also many new technological tools for improving efficiency of workflow as a general matter. We found at the CJC that decreasing our reliance on paper not only decreased our costs, but also improved the efficiency of the work generally. When the courts consider proposals for adopting new technology, members of the court who have a personal understanding of or experience with such technology will be better able to assess such proposals.

My personal experience and expertise in technology is, I believe, a unique asset and qualification that will benefit the Court of Appeals.

61. If selected for this position, do you intend to serve a full term and would you accept rotation to benches outside your areas of practice or interest and accept assignment to any court location? **Yes.** If not, explain.
62. Attach a brief statement explaining why you are seeking this position.

**See Attachment 3.**

63. Attach two professional writing samples, which you personally drafted (e.g., brief or motion). **Each writing sample should be no more than five pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing samples. Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public on the commission's website.

**Sample One: Attorney General Opinion I15-011 (R15-013) [Attachment 4]**

Attorney General Opinions are subject to several layers of review before issuance, and often reflect the collaborative effort of several attorneys—similar to the manner in which appellate opinions generally reflect the input of the relevant panel. I have chosen this particular opinion as one that primarily and substantially reflects my own authorship and analysis. The opinion reviewed state law in the wake of a U.S. Supreme Court decision under the First Amendment to the U.S. Constitution.

**Sample Two: Brief Excerpt from *Arizona v. Cesar Vega-Mosqueda* [Attachment 5]**  
I represented the State in crafting this appellate brief in a criminal matter that arose in Pima County. I have excerpted here the legal analysis section.

64. If you have ever served as a judicial or quasi-judicial officer, mediator or arbitrator, attach sample copies of not more than three written orders, findings or opinions (whether reported or not) which you personally drafted. **Each writing sample should be no more than ten pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing sample(s). Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public on the commission's website. **N/A**
65. If you are currently serving as a judicial officer in any court and are subject to a system of judicial performance review, please attach the public data reports and commission vote reports from your last three performance reviews. **N/A**

**-- INSERT PAGE BREAK HERE TO START SECTION II  
(CONFIDENTIAL INFORMATION) ON NEW PAGE --**

# Attachment 1

**LAST**

ABAIE  
ACOSTA  
ACOSTA-COLLINGS  
ADAMS  
AHLER  
ALEXANDER  
ALLEE  
ALLEMAN  
ALVAREZ  
ANDERSEN  
ANDERSON  
ANEMONE  
ANTOSZ  
ARENA  
ASCHENBACH  
BACON  
BAEK  
BAILEY  
BALDNER  
BARREDA  
BARRICK  
BASKIN  
BASS  
BECKLUND  
BEHUN  
BELJAN  
BENJAMIN  
BERKOWITZ  
BICKETT  
BLACKWELL  
BLAKE  
BOND  
BONNELL  
BONSALL  
BOWEN  
BOYD  
BOYLE  
BRACCIO  
BRACHTL  
BRENNAN  
BRNOVICH  
BROSH  
BROWNRIGG  
BURTON  
CAMPBELL  
CANTRELL  
CAPUTO  
CARBONE  
CARTER

**FIRST**

IAN  
JOE  
CLAUDIA  
AMANDA  
PAUL  
RANDI  
MITCHELL  
PAULA  
MICHAEL  
SARAH  
KIM  
ALEXANDRIA  
JOANNA  
DEANDRA  
RON  
JAMES  
RICHARD  
MICHAEL  
VICTORIA  
JOSHUA  
JENNIFER  
MONA  
JONATHAN  
MARJORIE  
BARBARA  
JOTHI  
DENA  
KEVIN  
PAULA  
STEPHANIE  
SCOTT  
MICHELLE  
NANCY  
MOLLY  
JAMES  
TERRY  
PATRICK  
MYLES  
MARK  
CARRIE  
MARK  
LAURA  
DANIELLE  
MICHELLE  
ELIZABETH  
JEFFREY  
LOUIS  
JOHN  
PAUL

CASEY  
CAWTHON  
CEOLA  
CHAPMAN  
CHAPMAN-HUSHEK  
CHARTER  
CHAVEZ  
CHENAL  
CHIASSEN  
CHRISTENSEN  
CHYNOWETH  
CIAFULLO  
CLARK  
CLAW  
CLAXTON  
COLE  
CONLEY  
CONTI  
COOK  
COOPER  
COORDES  
CORCORAN  
CORLEY  
CORTINA  
COULSON  
COUSINEAU  
COX  
CRAIG  
CRANDELL  
CRANE  
CRIST  
CROWLEY  
CYGAN  
DAHL  
DAILEY  
DAMSTRA  
DANIELS  
DAULT  
DAVIS  
DAVIS  
DAY  
DELAAT WILLIAMS  
DELANEY  
DICK  
DLOTT  
DONALD  
DONE  
DRAYE  
DU MEE

DENTON  
WILLIAM  
JASON  
AMY  
NICHOLAS  
STEPHANIE  
BRITTANY  
THOMAS  
LAURA  
SCOTT  
SUZANNE  
MARK  
DOUGLAS  
GRACYNTHIA  
NAOMI  
DAVID  
JACQUELINE  
DAVID  
RENEE  
LESLIE  
GREGORY  
AUBREY JOY  
JASON  
DARLENE  
LESLIE  
ASHLEY  
CURTIS  
THERESA  
RUSTY  
ALISON  
TERRY  
JASON  
KIMBERLY  
CANDY  
JAMES  
KATHRYN  
EVAN  
RICHARD  
CHRISTOPHER  
SUSAN  
DIANA  
MARY  
JESSE  
ADAM  
DAVID  
SCOTT  
JULIE  
DOMINIC  
MATTHEW

DUELL	AARON	GREEN	JAMES
DUPLISSIS	STEVEN	GRUBE	CHARLES
DWORMAN	HOWARD	GUILLE	MISTY
DYLLA	CHRISTOPHER	HACHTEL	LAURIE
DYLO	JOSEPH	HAIGHT	RAYMOND
EARP	JAMES	HALL	DANIEL
EASTERDAY	JASON	HALL	FRANKLIN
EGGLESTON	REBECCA	HANDY	JO-ANN
ELLIOTT	STEPHANIE	HARAMES	BRETT
ELLIS LANGFORD	TAREN	HARGRAVES	SETH
EMEDI	STEPHEN	HARRINGTON	BRIDGET
EMERSON	JORDAN	HARRIS	MARC
ENRIQUEZ	LAURA	HARRIS	VERNON
ESPINOSA	GIOCONDA	HARRISON	TERRENCE
EVANS	LYNETTE	HARRISON	WENDY
FALGOUT	JOANN	HARRISS	MARY
FALLER	ELIZABETH	HARTMAN-TELLEZ	KAREN
FALVEY	KEVIN	HAWKINSON	ERIN
FERRIS	CHARLES	HAZARD	GREGORY
FORSCH	ERICA	HEATHCOTTE	BROCK
FOSTER	SHANE	HEINRICK	TRACEY
FOX	ARDENE	HEMANN	LISA
FRANCIS	JILLIAN	HENDERSON	ARIEL
FRANK	SUSAN	HENRY	MELISSA
FRANKLIN	MADELYNN	HERLIHY	MATTHEW
FREESTONE	SHYLA	HERRERA-	VIRGINIA
FRIES	JERRY	GONZALES	
FROEDGE	ANNE	HERZHAFT	CHELSEA
FRY	JOHN	HESSINGER	MARK
FULLER	CATHLEEN	HEYHOE-	JOHN
FULLER	SHAWN	GRIFFITHS	
GADOW	BLAINE	HICKS	SARAH
GALVIN	JEANNE	HILL	KENNETH
GARBUTT	BART	HOBART	ANN
GARCIA	ELIZABETH	HOFFMANN	ASHLEE
GARNER	DEBORAH	HOLDEN	MICHELE
GARRETT	NATALIA	HOLYA	ROBERT
GAUGHAN	MICHAEL	HOPE	ASHLEIGH
GEVERS	ALICIA	HORN	JEREMY
GILLILAN-GIBSON	KELLY	HOSTALLERO	PAMELA
GILTNER	CYNTHIA	HOWE	CHERIE
GIOVANATTO	DONATO	HRNICEK	MICHAEL
GOLOB	ELCHONON	HUCKABY	LINDSAY
GOMEZ	MAUDI	HUFF	LAURA
GOODMAN	MICHAEL	HUGHES	KENNETH
GOODWIN	MICHAEL	HUGHES	LINDSAY
GORDON	ERIC	HUNT	DIANE
GOTTFRIED	MICHAEL	HUNTER	JENNIFER
GOULD	CONNIE	HUNTER-PATEL	SHILPA
GOURLAY	VIRGINIA	HURTADO	ANGELA
		HUTCHESON	JONATHAN

HYNES	GREGORY	LUTTINGER	ALINE
INGLE	MARK	MACMILLAN	SHAWN
JACOBS	DAVID	MAHONEY	MACAEN
JAMESON JR	WILLIAM	MALHOTRA	MONICA
JAQUET	LORENA	MANGIN	DAVID
JARVIS	GINGER	MANJENCICH	ZORA
JOHNSON	ELIZA	MANLEY	JONATHAN
JOHNSON	JANNA	MANSUR	ERIKA
JOHNSON	JOHN	MANTY	ZACHARY
JONES	ALICE	MARCIANO	VALERIE
JONES	BRYSON	MARDEROSIAN	TRAVIS
KANE	SANDRA	MARKLEY	JENNIFER
KARLSON	KARA	MARTIN	DAVID
KASTURI	SAVITA	MARTIN	KATHRYN
KATZ	PAUL	MARTONCIK	KATHLEEN
KAWAMURA	ANNDREA	MAY	ROBERT
KELLY	TANJA	MAZIARZ	JOSEPH
KHAN	SABRINA	MCBRIDE	JARRED
KIDO	LIANE	MCBRIDE	JENNIFER
KLEIN	JESSICA	MCCARTHY	ERYN
KLINGERMANN	NICHOLAS	MCCORMACK	CHRISTOPHER
KNOBLOCH	ERIC	MCCOY	DIANE
KNOX	EMET	MCCRIGHT	ROBERT
KREAMER HOPE	JARED	MCCUTCHEON	KYLE
KRENCH	RYAN	MCGARY	MARY
KRISHNA	SUNITA	MCKAY	NEIL
KRSTYEN	MICHELLE	MEDIATE	CARMINE
KUNZMAN	MICHELLE	MEDINA	FREDERIC
KUPEC	ROBERT	MEISLIK	ALYSE
LAMAGNA	PATRICIA	MELVIN	LEILA
LAMSON	STEPHANIE	METELITS	RACHEL
LANUM	JACINDA	METZ	KALON
LARSON	JENNIFER	MILLER	EOGHAN
BURGGRAF		MILLER	KEITH
LARUE	JOSEPH	MINNICK	JULIE
LAU	DOUGLAS	MOLINA	KEILA
LAWRENCE	DONALD	MONRO	CATHERINE
LAWSON	TODD	MONTAVON	JOSHUA
LEGG	MICHELE	MOODY	KAREN
LENTO	GARY	MOORE	PENNY
LESUEUR	LEO	MORGAN	GAYLENE
LEVINE	JONATHAN	MORLACCI	MARIA
LEVY	ERIC	MORRIS	COLBY
LEWIS	JASON	MORRISSEY	KELLEY
LILLIE	STEPHANIE	MORROW	NANETTE
LINDSEY	MARGARET	MOSER	JOSHUA
LINNINS	PAMELA	MOSS	ELIZABETH
LOMBINO	MICHELLE	MUNNS	CHRISTOPHER
LOPEZ	ERIN	MURRAY	JILL
LOVE	KENNETH	NAIK	NIDHI

NARANJO  
NAVEN  
NEWMAN-  
DAHLQUIST  
NGUYEN  
NIELSEN  
NIMMO  
NOEL  
NORRIS  
NORTHUP  
NOWLAN  
O'DONNELL-SMITH  
O'TOOLE  
ODENKIRK  
OELZE  
OLIVER  
ORTIZ  
OUSOUNOV  
OVERHOLT  
OWENS  
PACKARD  
PADILLA  
PARKMAN  
PARSONS  
PEARSON  
PEARSON  
PELLEGRINO  
PERKINS  
PERRY  
PERSHON  
PIENSOOK  
PIGNATELLA CAIN  
PINTEL  
PLATTER  
POLLOCK  
POLLOCK  
PONCE  
POOLE  
PULVER  
RAIMONDO  
RAINE  
RAINE  
RAND  
RANKIN  
RASCHER  
RASSAS  
RASSAS  
RAY  
RAYNES  
REEVES

NANSI  
TYNE  
ANNA  
  
ANGELINA  
JIMMY  
MICHELLE  
CARLOS  
BENJAMIN  
DAWN  
REX  
COLLEEN  
MICHAEL  
JAMES  
DEBORAH  
JAIMEE  
KIMBERLY  
DEIAN  
ELIZABETH  
HEIDI  
SAMUEL  
JAMES  
NATALIE  
CYNTHIA  
GRANT  
KATHIE  
HEATHER  
JENNIFER  
BRYAN  
AMBER  
KHANRAT  
AMY  
SUSANA  
BONNIE  
BRADLEY  
LINDA  
ADELE  
PAMELA  
ROBERTO  
JORDYN  
MICHAEL  
THOMAS  
LUCY  
THOMAS  
STEPHANIE  
MICHAEL  
THERESA  
KEVIN  
RACHEL  
KRISTINA

REGULA  
REH  
REILLY  
REINER  
REMES  
RENNICK  
RHODES  
RICHARDSON  
RICHTER  
RIVERA  
ROBINSON  
ROSE  
ROSEN  
ROTHBLUM  
ROUN  
ROYLE  
ROYSDEN  
RUDD  
RUIZ  
RUIZ  
RYAN  
SACCONE  
SALTZ  
SALVATI  
SAMARDZICH  
SANDERS  
SARGEANT  
SCHAACK  
SCHAUPP  
SCHLOFFMAN  
SCHLOSSER  
SCHWABE  
SCHWARTZ  
SCHWARTZ  
SCHWARZ  
SCIARROTTA  
SCOTFORD  
SELL  
SEYMOUR  
SHEIRBON  
SHERIDAN  
SHERIFF  
SHINN-ECKBERG  
SHREVES  
SIEDARE  
SILVERMAN  
SIMON  
SIMPSON  
SIMPSON  
SINGH

RYAN  
DEANIE  
ANDREW  
BRITTANY  
RACHEL  
REBECCA  
JULIE  
ERIN  
LAUREN  
MELISSA  
DAVID  
DUNCAN  
BILLIE  
ERIC  
HEATHER  
KARIN  
BRUNN  
JOEL  
AMANDA  
VALERIE  
TARANEH  
NICHOLAS  
MICHAEL  
CAROL  
ANDRIJA  
JENNIFER  
WILLIAM  
DANIEL  
HEATHER  
JERRY  
JOHN  
KAREN  
ADAM  
JONATHAN  
ERIC  
JOSEPH  
REBEKAH  
JANET  
HELENA  
JUDY  
TODD  
JENNIFER  
FRANCES  
TERESA  
SABRA  
MATTHEW  
WILLIAM  
DAVID  
JAMES  
NEILENDRA

SKARDON	JAMES	VAMPOTIC	MICHAEL
SKINNER	ORAMEL	VIDRIGHIN	ANNA-MARIA
SLADE	EDWIN	VILLARREAL THEIS	APRIL
SMITH	CARRIE	VILLARREAL-REX	KRISTI
SMITH	KEVIN	VINCENT	ELAINE
SOTTOSANTI	VINCENT	VOGEL	DANA
SPARKS	JEFFREY	VOSS	IVY
SPENCE AMBRI	MARIETTE	WALKER	DARYL
ST JOHN	LINDSAY	WALSH	ROBERT
STEELE	JERROD	WAN	HOLLY
STEINLE	ROLAND	WARD	PATRICIA
STEPHENSON	KYLE	WATERS	JOSEPH
STERLING	DEBRA	WATKINS	PAUL
STONE	ADAM	WATSON	TIMOTHY
STOVER GARD	LACEY	WEINKAMER	ADRIENNE
STRITTMATTER	MAURA	WHITAKER	EDYTHE
SULLIVAN	DAVID		SUZANNE
SWEENEY	KATHLEEN	WHITE	CHRISTOPHER
SWINFORD	ROBERT	WHITE	TARAH
SYREGELAS	ANGELA	WILCOX	DANIEL
TANNER	DEBRA	WILLIAMS	DAWN
TAYLOR	ROBERT	WILLIAMS	MATTHEW
TEASDALE	SCOT	WILSON	LINLEY
TELLIER	JOHN	WINNE	ESTHER
THORSON	AMY	WOLAK	DAVID
TIBBEDEAUX	LISA	WOMACK	STEPHEN
TODD	JOHN	WONG	EDWARD
TOM	TIFFANY	WOOTEN	PHILIP
TRUMAN	EDWARD	WORCESTER	BROOKE
TRYON	GEORGE	YBARRA	ELIZA
TURNER	CAREY	YOUNG	RANSOM
UPDIKE	BENJAMIN	ZAWISLAK	GOSIA
VALADEZ	TONI	ZEDER	FRED
VALDEZ	ALEJANDRA	ZEISE	CARL
VALENZUELA	DENISE	ZIMMERMAN	JOSHUA
VALENZUELA	MICHAEL	ZINMAN	JANA
VALEROS	JENILEE	<b>Total Attorneys:</b>	



# Attachment 2

## **Members of the Commission on Judicial Conduct**

**2012-2014**

Hon. Gus Aragon, Tucson

Roger D. Barton, Prescott

Colleen E. Concannon, Tucson

Hon. Louis Frank Dominguez, Phoenix

Hon. Peter J. Eckerstrom, Tucson

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Hon. Michael O. Miller, Tucson

David L. Stevens, Phoenix

Catherine M. Stewart, Tucson

J. Tyrell Tabor, Phoenix

Hon. Lawrence F. Winthrop, Phoenix

# Attachment 3

The law is the organization of the natural right of lawful defense. It is the substitution of a common force for individual forces. And this common force is to do only what the individual forces have a natural and lawful right to do: to protect persons, liberties, and properties; to maintain the right of each, and to cause justice to reign over us all.

\* \* \*

No society can exist unless the laws are respected to a certain degree. The safest way to make laws respected is to make them respectable. When law and morality contradict each other, the citizen has the cruel alternative of either losing his moral sense or losing his respect for the law. These two evils are of equal consequence, and it would be difficult for a person to choose between them. The nature of law is to maintain justice. This is so much the case that, in the minds of the people, law and justice are one and the same thing.

--The Law, Frederic Bastiat

I have been interested our system of justice for as long as I can remember. Indeed, on occasion growing up I managed to convince my family to hold court so my brother and I could sort out our differences. I've always been fascinated with and driven by a passion for doing justice and pursuing law. Mr. Bastiat's profound work in The Law presents arguments at the core of my passion: finding that place where the law and justice are one, where the people can properly respect the law and its exercise.

My work in public interest law made this passion more three-dimensional, introducing me to the individuals and communities that are impacted when the law diverges from justice and seeks harmful or immoral ends. When I transitioned to the Commission on Judicial Conduct, I was blessed to encounter so many honorable men and women with noble motives who populate Arizona's bench. I saw those judges who acted contrary to the ethics rules, of course, but I encountered so many more who adhere to ethical principles even in the face of difficult situations.

When Attorney General Brnovich invited me to join his administration in part for the purpose of working with Attorney General Opinions, I jumped at the chance to have this unique role in the law. My work here led me to submit this application as I believe I am both qualified for and would enjoy the position.

Appellate judging is not simple work, but it is clearly rewarding; it is also quite different from the work of a trial lawyer, requiring a different skill set. I have practiced in both trial and appellate courts, and have determined that my particular skill set is suited to the appellate bench specifically. A trial court judge must be skilled in a courtroom setting, interacting with parties daily with a significant focus on facts, evidence, and snap legal rulings. Appellate judges have substantially less interaction with parties, and are primarily focused on the legal issues with paramount skills being legal research, analysis, and writing. These are my areas of strength, and the areas in which I have significant experience.

I have a contribution to make, and I ask for the Commission's support in allowing me to do so.

# Attachment 4



**STATE OF ARIZONA**

**OFFICE OF THE ATTORNEY GENERAL**

<p>ATTORNEY GENERAL OPINION</p> <p>By</p> <p>MARK BRNOVICH ATTORNEY GENERAL</p> <p>December 2, 2015</p>	<p>No. I15-011 (R15-013)</p> <p>Re: Whether A.R.S. § 16-1019 requires an amendment</p>
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To: Senator John Kavanaugh  
Arizona State Senate

**Question Presented**

What legal impact does the recent United States Supreme Court ruling in *Good News Presbyterian Church v. Town of Gilbert* have on Arizona Statutes regulating political campaign signs? In particular, does the Supreme Court ruling require an amendment to Section 16-1019, Arizona Revised Statutes, in order to comply with the Court's mandate?

**Summary Answer**

The Supreme Court's decision does not directly impact any Arizona statutes regulating political campaign signs. It does not require an amendment to Section 16-1019 because nothing in that statute restricts speech.

**Background**

In 1962, the Arizona Legislature adopted House Bill 198, which provided misdemeanor penalties for anyone to "remove, alter, deface, or cover any political sign." Laws 1962,

Chapter 124 (HB 198) [codified as A.R.S. § 16-1312(A) (1962)]. At the time, the provision did not apply to “signs placed on private property with or without permission of the owner thereof, or signs placed in violation of state law, or county, city or town ordinance or regulation.” *Id.* [§ 16-1312(B)].

Since 1962, the statute has been amended a number of times. Its original function—imposing misdemeanor criminal penalties for tampering with political signs—has remained unchanged. In 2011, the Legislature significantly amended the law by:

1. Clarifying that local governments generally lack the authority to tamper with political signs that support or oppose a candidate or ballot measure and exist in a public right-of-way as long as the sign:
  - a. does not present a public hazard, obstruct vision, or interfere with the Americans with Disabilities Act;
  - b. meets maximum size limitations; and
  - c. contains contact information for the candidate or campaign committee.
2. Allowing a local government to relocate signs deemed to be placed in a manner constituting an emergency, subject to certain requirements.
3. Limiting the liability of a public employee who does not remove or relocate a sign pursuant to the “emergency” provision.
4. As to the provisions in number 1, exempting “commercial tourism, commercial resort and hotel sign free zones as those zones are designated by municipalities” and setting restrictions for such zones.
5. Allowing local governments to prohibit the installation of signs on government structures.
6. Limiting the prohibitions described in number 1 above from 60 days before a primary to 15 days after a general election, in most cases.
7. Clarifying that the section “does not apply to state highways or routes, or overpasses over those state highways or routes.”

A.R.S. § 16-1019. Acting under the authority of point four, municipalities have adopted ordinances creating tourism zones. *See, e.g.*, Fountain Hills Resolution No. 2012-31 (adopted

November 15, 2012); Paradise Valley Resolution No. 1241 (adopted October 13, 2011). These ordinances allow municipalities to remove political signs from the designated zones.

In June 2015, the United States Supreme Court decided *Reed v. Town of Gilbert, Arizona*, 135 S. Ct. 2218 (2015), clarifying the constitutional standard applicable to laws that restrict or limit speech based on its content. Specifically, the Court more clearly defined which laws are considered content-based and thus subject to strict scrutiny. A law subject to strict scrutiny is unconstitutional unless the government defending it can demonstrate that the law serves a compelling government interest and does so in the least restrictive manner possible.

### **Analysis**

The *Reed* decision explicitly confirmed that *any* content-based government restriction of speech will be subject to the most rigorous level of review. *Id.* at 2227. Such restrictions will therefore most likely be found unconstitutional. *See Williams-Yulee v. Florida Bar*, 135 S. Ct. 1656, (2015) (noting that only in “rare cases” will “a speech restriction withstand[] strict scrutiny”). While the Court has long required content-based restrictions to meet this very high bar, determining when a regulation is or is not content-neutral remained open until *Reed* resolved the question by classifying any differential treatment based on “topic” as content-based:

Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed. This commonsense meaning of the phrase “content based” requires a court to consider whether a regulation of speech “on its face” draws distinctions based on the message a speaker conveys. Some facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose. Both are distinctions drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny.



135 S. Ct. at 2227 (internal citations omitted). Under this standard, courts must apply strict scrutiny to special restrictions for political signs. *Reed* did not, however, restrict the permissibility of traditional time, place, and manner restrictions.

There are only three state laws regulating political signs in Arizona. Two of them, A.R.S. §§ 33-1261 and 33-1808, limit the ability of homeowners associations to restrict placement of political signs. A.R.S. §§ 33-1261(E), 1808(H), (I). The third statute, A.R.S. § 16-1019, imposes criminal penalties for interfering with political materials, including signs, and incorporates the exceptions described above, which allow a local government to adopt regulations relating to political signs.

Because this statute explicitly references political signs, one might suppose that it runs afoul of the First Amendment based on *Reed* because it references a particular category of speech identified by its content. To the contrary, *Reed* does not invalidate Section 16-1019. *Reed* clarified the analytical framework applicable to sign regulations that *restrict speech* and thus present “the danger of censorship” at the heart of First Amendment concerns. *Reed*, 135 S. Ct. at 2229. But nothing in Section 16-1019 restricts speech or compels the regulation of signs. Instead, it establishes the limits—under Arizona law—of what local governments may do as *they* limit or regulate signs. For example, subsection (F) recognizes that municipalities may designate certain sign-free zones within which the municipality may remove political signs. While such local laws might fall within the scope of *Reed*’s definition of content-based regulation, Section 16-1019 itself does not constitute content-based regulation.<sup>1</sup>

A municipality desiring to enact rules specifically targeting political signs in violation of *Reed* cannot rely on Section 16-1019(F) to inoculate such rules against a First Amendment

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<sup>1</sup> Justice Alito’s concurring opinion in *Reed* provides a number of examples of rules that are not content-based. 135 S. Ct. at 2334 (listing, *inter alia*, restrictions on size, illumination, off-premises placement, and number of signs).

challenge. The state law must now be read in light of *Reed*, and should thus be read as permitting municipalities to engage in sign regulation through the designation of tourism zones only to the extent that they do so in a content-neutral manner. In other words, such zones may not solely target political signs, but must employ generally-applicable time, place, and manner restrictions. That reconciliation with *Reed* does not affect the validity of Section 16-1019.

### **Conclusion**

Arizona state statutes referencing political signs do not restrict speech, so *Reed* does not have implications for our state statutes. Because Section 16-1019 does not itself restrict speech, it does not implicate the First Amendment and *Reed* does not, therefore, invalidate this state law. There is no need to amend Section 16-1019 because of the *Reed* decision.

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Mark Brnovich  
Attorney General

# Attachment 5

**ARIZONA COURT OF APPEALS**  
**DIVISION TWO**

STATE OF ARIZONA,  
  
Appellee,  
  
v.  
CESAR VEGA-MOSQUEDA,  
  
Appellant.

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2 CA–CR2016–0222

Pima County Superior Court  
No. CR2015–3206–001

**APPELLEE’S ANSWERING BRIEF**

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Attorneys for Appellee

¶ 7 Appellant did not dispute that he engaged in sexual intercourse with his wife on the night in question, but maintained that R.C. consented. (R.T. 4/14/16, at 107–08, 115.) The jury believed R.C.’s testimony and found Appellant guilty of three separate sexual assaults for forcefully putting his penis in R.C.’s vulva, mouth, and anus. (R.O.A., Items 77, 79, 80.)

¶ 8 Due to the lack of aggravating factors, and taking into account mitigating factors, the trial court imposed the minimum sentence of 5.25 years imprisonment for each sexual assault conviction. (R.T. 5/16/16, at 11–12.) The court explicitly rejected Appellant’s invitation to disregard the Legislature’s mandate that the sexual assault convictions be served consecutively. (*Id.* at 11.)

### C. ANALYSIS.

#### 1. *The Trial Court Properly Applied the Plain Text of the Statute.*

¶ 9 The jury convicted Appellant of three counts of sexual assault pursuant to A.R.S. § 13–406. In that statute, the Legislature mandates that “[t]he sentence imposed on a person for sexual assault shall be consecutive to *any other sexual assault sentence* imposed on the person *at any time.*” A.R.S. § 13–406(C) (emphasis added). Relying on this language, the trial court required that Appellant’s three sentences for separate sexual assault convictions be served consecutively.

¶ 10 The trial court's imposition of consecutive sentences for Appellant's three sexual assault convictions was consistent with the plain text of the statute. Each of the convictions in this case constituted an "other sexual assault sentence" imposed "at any time." The statutory language is not permissive, and thus mandated the Court's imposition of consecutive sentences.

**2. *The Statute's Plain Text Does Not Lead to an Absurd Result.***

¶ 11 Appellant does not, indeed he cannot, challenge the court's plain text reading of the statute. Instead, he asserts that application of the plain text leads to an absurd result. (O.B. at 21–22.) Courts must apply the plain meaning of statutes unless doing so leads to an absurd result. *Bilke v. State*, 206 Ariz. 462, 464 ¶ 11 (2003). "A result is absurd if it is so irrational, unnatural, or inconvenient that it cannot be supposed to have been within the intention of persons with ordinary intelligence and discretion." *State v. Estrada*, 201 Ariz. 247, 251 ¶ 17 (2001).

¶ 12 Appellant claims that applying the plain text results in a serial rapist, who engages in multiple assaults over a period of months, being subjected to the same sentencing range and scheme as Appellant, who engaged in multiple assaults over a matter of hours. (O.B. at 21–22.) Appellant's solution is for the Court to interpret the statute contrary to its plain terms and mandate

consecutive sentences only when a defendant has a prior conviction for sexual assault. (*Id.*)

¶ 13 Appellant's argument fails for two reasons. First, Appellant's illustration only works if the State has previously convicted the serial rapist. If the State charges and tries him for the multiple sexual assaults but has not previously convicted him, then that defendant would still be subject to the same sentencing scheme as Appellant under his rewritten statute: imposition of consecutive sentences would be merely discretionary.

¶ 14 Second, and more importantly, Appellant simply has not met the requirement to show that application of the plain language is legally absurd. The Legislature's decision to mandate consecutive sentencing of all those convicted of multiple sexual assaults is a reasonable policy decision given the heinous nature of such crimes. And it does not leave courts without discretion: courts sentencing defendants like Appellant have the discretion to impose minimum sentences, for example, as occurred here. Presumably such would not be the case were the court faced with the serial rapist scenario that Appellant posits.

¶ 15 Further, the Legislature is presumed to know existing law when it enacts a statute. *Wareing v. Falk*, 182 Ariz. 495, 500 (App. 1995). In 1986 the Arizona Supreme Court held that a person can commit multiple violations of

the sexual assault statute in one sexual encounter, and separate punishment for each violation does not violate double jeopardy guarantees. *State v. Griffin*, 148 Ariz. 82, 85-86 (1986).<sup>3</sup> It has also been long-established that the State must charge separate offenses—such as separate sexual assaults—in separate counts. See, e.g., *Spencer v. Coconino County Superior Court*, 136 Ariz. 608, 610 (1983). The Legislature adopted the provision mandating consecutive sentences for multiple sexual assault convictions in 1998. 1998 Ariz. Sess. Laws, Ch. 281, § 3. It is presumed to have known at that time that this provision would apply in cases where the State charged multiple sexual assaults based on separate acts committed against a single victim over a short time period.

¶ 16 Requiring that any individual convicted of multiple sexual assaults—whether the convictions occur in the same case or multiple cases—serve consecutive sentences is not absurd, but rather quite logical. The Legislature here opted to leave to courts’ sentencing discretion the *amount* of each

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<sup>3</sup> Appellant raised a double jeopardy argument against consecutive sentencing before the trial court. (R.T. 5/16/16, at 7; O.B. at 16–17.) He has not explicitly raised that argument on appeal, though his repeated characterization of his assaults as a “single sexual encounter” coupled with his assertion that the mandatory consecutive sentencing provision does not apply in this case, (O.B. at 16), are perhaps an inferred invitation to depart from *Griffin* here. This Court should decline any such invitation.



individual sentence, but has mandated that convicted defendants will serve separate, consecutive time for each one of those sentences.

**3. *Reliance on Purported Legislative History is Both Unhelpful and Improper.***

¶ 17 In support of his request that this Court rewrite the law, Appellant points to a piece of legislative history, the Senate Fact Sheets. (O.B. at 22.) Those documents, prepared by legislative staff, asserted that the proposed addition of the provision at issue here would apply to require consecutive sentences to any “prior sexual assault sentence imposed on the defendant.” (*Id.*) Regardless of the musings of a legislative staffer, that language did not find its way into the statute. Moreover, it is true that mandating consecutive sentences for “any other sexual assault sentence imposed on the person at any time,” A.R.S. §13–406(C), requires consecutive sentences to “any prior sexual assault sentence imposed upon the defendant.” (O.B. at 22.) It *also* requires that a defendant receive consecutive sentences for *each* sexual assault conviction. Thus, the “fact sheets” are entirely consistent with the statute.

¶ 18 Appellant’s proposed rewriting of the statute is not only contrary to the plain text, it is also illogical. Generally, a defendant with a previously imposed sexual assault sentence cannot serve that sentence concurrently with a subsequent sentence because he will have completed the first sentence before receiving the second.

¶ 19 The plain text of the statute is unambiguous and does not lead to an absurd result. There is thus no basis on which the Court should consider language from a legislative document that the body did not enact and it certainly should not look to such language to re-write an unambiguous statute.

### **CONCLUSION**

¶ 20 Based on the foregoing authorities and arguments, Appellee respectfully requests that this Court affirm the judgments and sentences of the trial court.

Respectfully submitted,

Mark Brnovich  
Attorney General

/s/ \_\_\_\_\_  
Jennifer Perkins  
Assistant Solicitor General

/s/ \_\_\_\_\_  
Joseph T. Maziarz  
Chief Counsel

Attorneys for Appellee